

Senate Bill No. 1261

CHAPTER 30

An act to amend Section 56728.7 of the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1997. Filed with
Secretary of State June 30, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1261, Sher. Special education.

(1) Existing law authorizes the Superintendent of Public Instruction to conduct a statewide pilot program for the 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years to enable and encourage school districts and county offices of education, either individually or through special education local plan areas, to establish programs in public schools for individuals with exceptional needs who are currently placed in nonpublic, nonsectarian schools and to develop plans for the return of these pupils to an appropriate public school program, with a view of determining whether these new programs can provide an effective mainstreaming education program in a less restrictive environment that is appropriate to each pupil's needs for services as specified in his or her written individualized education program.

Existing law requires the Superintendent of Public Instruction to conduct a similar pilot program in San Mateo County and in the Contra Costa County special education local plan area for the 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years to encourage and enable the San Mateo County Office of Education and the Contra Costa County special education local plan area to identify pupils who currently are placed into a nonpublic school program by San Mateo County school districts or Contra Costa County school districts, respectively, but are able to be returned to an appropriate public school program, and to identify seriously emotionally disturbed pupils who currently are in a public school program who are imminently at risk of placement in a nonpublic school program or another more restrictive setting. The purpose of each pilot program is to establish new public school programs that maintain an effective mainstreaming education program that is appropriate to each pupil's needs for the services specified in a pupil's individualized education program, and thereby avoid placing those pupils in a nonpublic school setting. These pilot programs and the statewide pilot program operate through the 1996-97 fiscal year and the provisions governing these programs are repealed as of January 1, 1999.

This bill would extend the operation of the pilot programs in San Mateo County and Contra Costa County and the statewide pilot project to the 1997–98 fiscal year, thereby imposing a state-mandated local program, and would repeal these provisions on January 1, 2000.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 56728.7 of the Education Code is amended to read:

56728.7. (a) The Superintendent of Public Instruction may conduct a pilot program for the 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years to enable and encourage school districts and county offices of education, either individually or through special education local plan areas, to establish programs in public schools for individuals with exceptional needs who are currently placed in nonpublic, nonsectarian schools and to develop plans for the return of these pupils to an appropriate public school program, with a view of determining whether these new programs can provide an effective mainstreaming education program in a less restrictive environment that is appropriate to each pupil's needs for services as specified in his or her written individualized education program. Services provided pursuant to this section to each pupil by an individualized education program, including, but not limited to, psychotherapy, mental health, residential, or other services provided under provisions of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, shall be continued unless otherwise agreed to by a review of the pupil's expanded individualized education program team. The superintendent shall select, for this purpose, no more than 10 school districts or county offices of education that are willing to participate in the pilot project, through an application process to be developed by the superintendent during the 1991–92 fiscal year in accordance with subdivision (c). A maximum of 200 pupils shall participate in the statewide pilot program at any given time. Of the 200 pupils, not more than 50 pupils shall be from any one school district, and no more than 15 pupils from any one school district shall be funded pursuant to Article 8.5 (commencing with Section 56775).

(b) In addition, the Superintendent of Public Instruction shall conduct a pilot program in San Mateo County and in the Contra

Costa County special education local plan area for the 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years to encourage and enable the San Mateo County Office of Education and the Contra Costa County special education local plan area to identify pupils who currently are placed into a nonpublic school program by San Mateo County school districts or Contra Costa County school districts, respectively, but are able to be returned to an appropriate public school program, and to identify seriously emotionally disturbed pupils who currently are in a public school program who are imminently at risk of placement in a nonpublic school program or another more restrictive setting. The purpose of each pilot program is to establish new public school programs that maintain an effective mainstreaming education program that is appropriate to each pupil's needs for the services specified in a pupil's individualized education program, and thereby avoid placing those pupils in a nonpublic school setting.

Services provided to a pupil pursuant to this section according to the pupils' individualized education program, including, but not limited to, psychotherapy, mental health, residential, or other services provided under the provisions of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, shall be continued unless otherwise agreed to by a review of the pupil's expanded individualized education program team.

(c) The superintendent shall ensure that the local application to participate in a pilot program pursuant to subdivision (a) describes the program and fiscal resources that it will use in implementing the pilot program, including, but not limited to, the establishment of the Local Pilot Program Advisory Committee and its implementing policies for the pilot program. The superintendent shall make every effort to ensure that the racial, ethnic, and socioeconomic composition of the Local Pilot Program Advisory Committee reflects the current racial, ethnic, and socioeconomic composition of the exceptional pupil population in the school districts in which the pilot programs are established.

In its preparation of the application for participation in the pilot program, the local education agency shall consult with the special education local plan area in which it is a member and describe the impact the pilot program would have on other programs and resources available within the special education local plan area.

In addition, the superintendent shall ensure that there is a sampling of multiple sizes of school districts and county offices of education, including special education local plan areas whose special education plan serves an average daily attendance of 30,000 or more. The sampling shall also include all of the following:

- (1) Local education agencies in urban and rural settings.



(2) Local education agencies serving large populations of individuals with exceptional needs from low-income and ethnic and linguistic minority families.

(3) Local education agencies impacted by a large number of individuals with exceptional needs who are served by nonpublic, nonsectarian schools and agencies.

(4) Local education agencies impacted by a large number of individuals with exceptional needs who reside in a foster family home, licensed children's institution, hospital, or other similar medical facility and who are served by nonpublic, nonsectarian schools or agencies.

(d) Consistent with Section 56366 and other provisions of law, it is the intent of the Legislature that programs developed pursuant to this section shall ensure the participation of, and coordination with, local contracted nonpublic, nonsectarian schools through the establishment of a Local Pilot Program Advisory Committee in order to develop, monitor, and evaluate policies to ensure that pupils' placements are changed when adequate progress is made and readiness for placement in a less restrictive environment located in a public school is achieved.

(1) The Local Pilot Program Advisory Committee shall be comprised of representatives of local public and contracted nonpublic school programs, parents, and other local public agencies providing services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Representatives of each Local Pilot Program Advisory Committee shall include two representatives of local contracted nonpublic schools designated by the California Association of Private Specialized Education and Services without regard to membership, one of whom shall be a representative of a licensed children's institution when it is determined that pupils in a licensed children's institution in a nonpublic school program placement may be considered for placement in a mainstreaming educational program, a representative of the special education local plan area administrative unit, a teacher representative of a local public school participating in the pilot program, a parent representative of the local community advisory committee, pursuant to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), a representative of a parent advocate, a representative of the local mental health advisory board, and a representative of each local public agency providing services to exceptional pupils within the special education local plan area under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) Notwithstanding any other provision of law, the Local Pilot Program Advisory Committee shall advise on the development, monitoring, and evaluation of policies and procedures that are



necessary to implement the pilot program. The advisement shall include, but not necessarily be limited to, the following subjects:

- (A) Pupil behaviors.
- (B) Pupil achievement and classroom performance reports.
- (C) Curriculum and class size.
- (D) Adequate support services.
- (E) Personnel qualifications.

(3) The Local Pilot Program Advisory Committee shall also advise on development procedures and criteria for evaluating the effectiveness of the pilot program pursuant to paragraph (1) of subdivision (h) and shall annually submit a written evaluation of the pilot program to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall evaluate selected pilot programs, based on the report of each advisory committee of how goals for an effective mainstream education program have been met in accordance with pupils' individualized education programs.

(e) (1) Notwithstanding any other provision of law, in the 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, and 1997-98 fiscal years for pilot programs operated pursuant to subdivision (a) and in the 1993-94, 1994-95, 1995-96, 1996-97, and 1997-98 fiscal years for the pilot programs operated pursuant to subdivision (b), the Superintendent of Public Instruction shall apportion to each of the school districts or county offices of education selected pursuant to subdivision (a), and to the San Mateo County Office of Education and the Contra Costa County special education local plan area in addition to any funds to which that district or county office is entitled under this chapter, an apportionment for each pupil who is returned by that district or county office from a nonpublic school program pursuant to this section. The apportionment shall be equal to the average amount apportioned to the special education local plan area in which that district or county office is located for pupils under Sections 56740 and 56775 in the 1991-92 fiscal year for pilot programs operated pursuant to subdivision (a), and the average amount apportioned to the San Mateo County special education local plan area and the Contra Costa County special education local plan area, respectively, under those sections in the 1992-93 fiscal year for the pilot programs operated pursuant to subdivision(b), excluding the costs of room and board as identified by Section 56741. The costs resulting to that district or county office from the placement of any pupil in a public program operated by the district or county office pursuant to this section, including any residual nonpublic school costs for pupils transitioning into the public program, shall be funded from this apportionment. No school district or county office of education shall be entitled to receive any funding under Section 56740 or 56775 in any fiscal year based on the enrollment of any pupil for which that district or county office receives funding in that fiscal year under this subdivision.

(2) The apportionment authorized under paragraph (1) may only be provided for pupils who were enrolled in a nonpublic, nonsectarian school in the fiscal year prior to the new year in which the pupil is returned to public school placement. Each pupil's placement shall be changed, in accordance with this part, to a public school special education program as described under this section no later than June 30, 1997, for pupils in a pilot program operated pursuant to subdivision (a) or subdivision (b).

(3) A school district or county office of education is not entitled to receive both a nonpublic school entitlement under Section 56740 or 56775, and a pilot program apportionment as authorized by paragraph (1) in any fiscal year for pupils' participation in the statewide pilot project.

(4) If a participating pupil leaves the pilot program due to age or achievement, a change of district of residence, or if it is subsequently determined by an individualized education program team that a pupil's programmatic needs cannot be successfully met in the mainstream education program, another pupil may replace that pupil if the new pupil qualifies under paragraph (2). If a pupil leaves the pilot program during any fiscal year for any of the above reasons, and the pupil cannot be replaced by another pupil who qualifies under paragraph (2), the school district or county office shall provide an adjusted full-time equivalent number of pupils who actually participated in the statewide pilot program for each fiscal year to the Superintendent of Public Instruction by no later than November 30 following each fiscal year of the pilot project. The adjusted full-time equivalent number of pupils shall be used to compute an appropriate reduction in the preceding fiscal year's annualized pilot program apportionment authorized under paragraph (1) before the adjustments, if any, as specified in paragraph (7) are performed.

(5) If a nonpublic school program is resumed for a pupil due to an unsuccessful transition to a mainstream education program, the district or county office may resume the reporting of nonpublic school costs under Sections 56740 and 56775 if the Superintendent of Public Instruction has been notified as specified in paragraph (4).

(6) For a pilot program operated pursuant to subdivision (a), the apportionment authorized under this section shall include the costs of one certificated person who shall serve as a mainstream education liaison. The workload of a mainstream education liaison shall not exceed a full-time equivalent per pupil caseload of 20.

(7) The apportionment authorized under paragraph (1) shall be used solely for purposes of providing special education programs. Any excess apportionment remaining from the costs of operating pilot programs pursuant to this section shall be adjusted from the subsequent year's apportionment which the district or county office of education may be eligible to receive. The amount of excess pilot program apportionment shall be reported to the Superintendent of

Public Instruction by not later than November 30 following each fiscal year of the pilot project.

(f) Notwithstanding any other provision of law, pilot project pupils shall not be included in the calculation of the number of instructional personnel services units to which a school district or county office is entitled, in the calculation of pupil service ratio as provided in Section 56760, or in the enrollment used to compute extended year entitlements pursuant to Section 56726.

(g) This section shall not be construed to authorize any increase in state apportionments for special education to which a participating school district or county office of education is entitled under this chapter.

(h) The Superintendent of Public Instruction shall evaluate the pilot program or programs operated pursuant to criteria developed in consultation with the participating school districts or county offices of education and a statewide representative of contracted nonpublic, nonsectarian schools. The evaluation shall include, but not necessarily be limited to, descriptive information and supporting data provided by the Local Pilot Program Advisory Committee and others as appropriate in determining whether the program operated by each participating district or county office accomplished each of the following objectives:

(A) Provided pupils who were formerly placed in nonpublic, nonsectarian schools with an appropriate and effective mainstreaming education program which is consistent with each pupil's needs as specified in his or her individualized education program and located in a less restrictive environment in a public school.

(B) Served those pupils in age-appropriate, less restrictive environments, including interaction or receiving instruction with their nonhandicapped peers.

(C) Provided pupils who were identified as being imminently at risk of nonpublic school placement with an appropriate and effective mainstreaming education program that is consistent with each pupil's needs, as specified in his or her individualized education program.

(D) Provided programs and services located in a public school to those pupils at a cost to the public that was no greater than that incurred in the nonpublic, nonsectarian school setting, from which pupils are returned and those identified as being at risk of placement under subparagraph (C), including the public program costs for instruction, designated instruction and services, direct support services, indirect support services, and the costs of services provided by local public agencies under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. It is the intent of the Legislature that the comparison of the costs for services provided by public and nonpublic school programs be based



on uniform program cost accounting procedures prescribed by the Superintendent of Public Instruction pursuant to Section 56730.5.

(i) The superintendent shall report the results of the evaluation to the Legislature no later than January 1, 1998.

(j) This section shall remain in effect only until January 1, 2000, and as of that date is repealed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the pilot programs effected by this measure to continue to operate in the 1997-98 fiscal year, it is necessary that this act take effect immediately.

